

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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FEDERAL TRADE COMMISSION,

02-CV-03415 (TCP/AKT)

Plaintiffs,

- against -

ESSEX MARKETING GROUP, INC., et al.

**MEMORANDUM  
AND  
ORDER**

Defendants.

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PLATT, District Judge.

Defendants, Essex Marketing Group, Inc., Westbrook Marketing Group, Inc., Westbrook Marketing Associates, LLC, and Richard Guadagno request a stay of this action pending the resolution of a related criminal proceeding against Richard Guadagno.<sup>1</sup>

A federal court has inherent power to issue a stay of civil proceedings “when the interests of justice require such action.” Kashi v. Gratsos, 790 F.2d 1050 (2d Cir. 1985). In determining whether to grant a stay of civil proceedings pending the outcome of related criminal proceedings, courts consider five factors: “(1) the private interests of the plaintiffs in proceeding expeditiously with the civil litigation as balanced against the prejudice to the plaintiffs if

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1 An application of this nature should be made by motion papers and not by letter to the Court.

delayed; (2) the private interests of and burden on the defendants; (3) the interests of the courts; (4) the interests of persons not parties to the civil litigation; and (5) the public interest.” Volmar Distrib. v. New York Post, 152 F.D.R. 36 (S.D.N.Y. 1993). While the Constitution does not ordinarily require a district court to issue a stay of civil proceedings when criminal proceedings are pending, the decision to issue a stay is left to the sound discretion of the district court judge. Id. at 39. The strongest case for granting a stay is when a party under criminal indictment is required to defend a civil proceeding of the same matter, as denying a stay in such instance might undermine a defendant’s Fifth Amendment privilege against self-incrimination. Id.

In light of the impending criminal proceeding against Richard Guadagno arising out of the same matter as the civil proceeding, this Court finds that it is in the interest of justice to grant a stay of the civil proceeding as to all Defendants pending the resolution of the related criminal proceeding against Richard Guadagno.

Defendants’ motion for a stay of this action is hereby GRANTED pending the resolution of the criminal case.

SO ORDERED.

/s/ Thomas C. Platt  
Thomas C. Platt, U.S.D.J.

Dated: Central Islip, New York  
September 22, 2006